

**Jaipur Branch of CIRC Of
The Institute of Chartered Accountants
of India**

Webinar on

**Global Attack
on
Black Money and Tax Planning**

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Notes: This is not a full paper. Important issues have been listed. During the Webinar these issues will be discussed.

All academic queries are welcome any time. Participants need not wait till the end of the session. Write your queries in Chat Box. I will try to deal with them at appropriate time.

1. **Preface:**

1.1 **My Objective in making this Presentation:**

Acharya Chanakya while teaching his student – Chandra Gupta Maurya said: “**Fear** is an essential feeling. It warns us of danger and makes us take protective steps.”

I may add: Normally for many risky situations our **common sense** tells us to take protective steps. Sometimes, we do not know a risky situation. So we are not afraid. This presentation provides the **missing knowledge**. Sometimes, the tax payers are aware of the risks. But **greed** takes over common sense. Hence I am presenting the extent of **risk**.

Fear is an instrument of protection. In the right measure it is good. Excessive fear paralyses. What sometimes happens is: Tax Payers exhibit false bravado at the time of avoiding tax. Then when caught, they are paralysed. Avoid both situations.

Some people (**Wishful Thinkers**) think that “Accidents happen only to others”. The Wishful Thinkers will never suffer an accident. Similarly there are wishful thinkers of different categories in taxation.

First: “IT raids & investigations will happen only on others. I won’t suffer”.

Second: “If there is an investigation of my black money, I will fight till Supreme Court or bribe my way through”.

Third: “I am powerful, influential (= connected with politicians) and rich. Department may not dare touch me.”

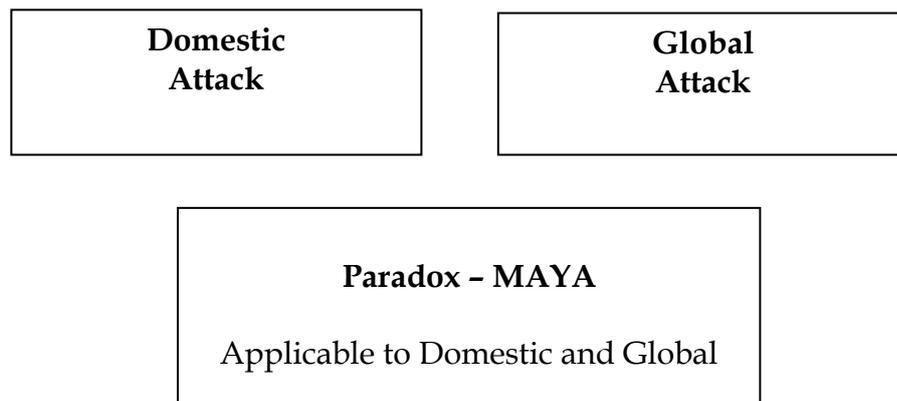
A single answer to all three wishful thoughts is: A powerful ex- FM went to Tihar Jail.

In adequate measure, fear will prevent you from wishful thoughts.

In short: Stop Black Money. Stop Aggressive tax planning.

If you agree with this advice, rest of the session is not necessary for you. Except that the section on “Maya (illusion)” may be interesting to you. But it is natural that neither you, nor your client will believe in a statement just because I am making the statement. See the article for support to my statement with details of law.

- 1.2 This is a **conceptual** discussion & not technical. I personally believe - We CAs are **like Family Doctors**. We are interested in our clients' long term welfare. Conceptual knowledge enables us to stay clear from several tax planning products being sold in the market. See the risk which is hidden behind the marketing done by their marketers. Give an advice which helps clients in avoiding the risks.
- 1.3 We will discuss the subject in two parts: Domestic & Global attack. At the end, a paradox: with all these drastic laws why Black Money does not go down?



Preface Completed

2. Organised Attack:

Present attack on Black Money & Tax Planning is a well organised attack covering almost all aspects. Consider these facts:

Within India there is a National Level planning in following manners:

Information collection -360 Degrees profiling. This is helped by Adhar Numbers & PAN Numbers linked with all financial transactions & Bank accounts. GST, TDS - 26 AS. All departments, banks & registrars of properties inform Income-tax department.

Investigations - several departments work together within India; and also exchange information with several countries including Tax Havens. A battery of laws and their administrators help each other. FEMA, PMLA, Black Money Law, Benami Law.

360 degree profiling. Real reason for **enforcing PAN number & Adhar Cards** & linking of both. Government started Adhar Card scheme for giving cash subsidies and doles to the poor. But insisted that everyone should take Adhar Card and link with Income-tax PAN, with Bank

accounts etc. All 5.65 crore IT payers are expected to have Adhar card & state the Adhar number in almost all important financial transactions. All major incomes, expenses and investments get collected by the Finance Ministry & linked to PAN. All financial transactions conducted through banks and credit cards are known. With this, Income-tax department now has a lot more information on the tax payers.

TDS is vast network. Almost any significant income will attract TDS. And details would be known and collected with the PAN.

Foreign remittances under **LRS** also attract TDS.

Digitalisation of Banking, Stock exchanges, Financial Institutions altogether help Income-tax department.

Big Data Analytics:

Understand **Project Insight** – a tax tracker based on big data, built carefully over several years at a purported cost of Rs 1,000 crore. Under the project, the government will put to use a range of non-traditional – but very effective – sources of information.

So far, traditional sources like **banks** were the only tools at government's disposal, leaving unscrupulous taxpayers a huge scope for evasion. The plan now is to gather virtual information not just from those traditional sources but also from **social media sites like Facebook and Instagram.**

Now when a person is raided, **department interrogates** the person **with complete information** on the raided assessee, his partners, family members, collaborators & dealers.

Assessment: Department is enabled by digital processes and “Face-Less Assessments”.

Interpretation of law: Several deeming provisions. There are more than 30 SAAR including TP. Section 6 **POEM** –Place of Effective Management – **rules made the law ineffective. Residential Status** of Individuals – **fiasco in Budget 2020.**

Section 9 PE & Indirect Transfer.

Sections 45, 56(2)(x); S. 68 to 69 D; 93 – all deeming provisions. And finally GAAR. Section 6 residential status

Harsh Penalties – Black Money Law, FEMA, Tax Recovery after first appeal. One cannot “bribe his way out” as information will flow from Centre to AO.

Tax Administration

There are so many **draconian powers** in the hands of the government that even if you are a straight forward, law abiding tax payer; you can still be harassed. (SC decision in **Make My Trip case**) Now if you do any aggressive planning or evasion – be ready for the consequences.

Tax officers asked to be strict. Every officer was given **quota for prosecution**. Officers have been asked that even if there is a single day delay in compliance, drastic consequences must follow. For example, if a registered charitable trust files its tax return – even a day later than the due date, it will lose its registration.

Department is planning to give us **our tax returns based on 26AS** etc. This is far more than reconciling Stock statements given to bank & given to AO for assessment. So many games played earlier have to be discarded.

Action against auditors & tax advisors.

In USA so many consultants have paid penalties of more than \$ 100 million. Arthur Andersen collapsed in Enron Scandal. KPMG paid up \$ 500 mn. Indian government has incorporated provisions enabling GOI to take action against tax advisors. Our present Prime Minister has expressed his view against CAs. Later he has praised CAs. But we must be careful. We cannot take Government for granted.

Judicial Trend:

Mumbai ITAT in Dhupelia's case and Renu Tharani's case. SC decision in **Azadi Bachao Andolan** will be in applicable with BEPS preamble to MLI & all treaties announcing that Treaties are not for tax avoidance. MLI permits department to apply Principal Purpose Test and Limitation of Benefits clauses.

SC decision in **Vodafone's case** will not help with amendments in section 9 for Indirect Transfer.

If you do any significant tax planning, rest assured, the law will be amended with retrospective effect.

ITAT Vice President Shri Pramod Kumar said at BCAS conference on 9th August, 2020:

“See the writing on the Wall. You won't be able to hide behind technicalities.

“ITAT decision in Renu Tharani's case-

“If you do not cooperate with the department, then an adverse view can be drawn against you.” He openly criticised Tax Haven governments & banks. Negative image of tax havens also prejudiced the minds of ITAT members. It is also a signal against aggressive tax avoidance. I am not going into the merits of the case. But it is a signal. We cannot ignore the signal that Judiciary will not permit tax payers to hide behind technicalities. If there is an allegation of Tax evasion, the assessee must be forthcoming and fully helping the department to disprove the allegation.

Risks involved in Tax Avoidance and Tax Evasion:

IT, GST, Economic Offenses Wing of police; DOE – FEMA & PMLA, Customs – all cooperate and can finish an industrialist. If one businessman is caught by any one revenue authority –all departments will swoop on him, and may jail him. Once jailed – the price of all helps shoot through the sky.

Hammer Blows like **Demonetisation.**

All Government actions are helped by **Digital Technology.**

Attack on Tax Havens:

All banks & consultants need to keep identity of the Ultimate Beneficial Owner. Banking secrecy has been broken down. For more than ten years RBI, DOE & IT department, are taking adverse views on tax havens. It is better to tell clients – not to bring in any tax haven in their Corporate Structure.

Succession Planning:

Some consultants still advise Succession Planning by the use of – Tax Havens, Discretionary trusts, use of LRS, and transfer of public limited companies’ shares to such foreign trusts. As per plans, there will be violations of FEMA & SEBI regulations. Imagine the kind of difficulties that the family would be placed in – when the violations are found out.

Estate Duty Planning.

Finance Minister Ms. Nirmala Sitharaman as well as Tax officers have declared that there is no plan to introduce Estate Duty in India. No planning is necessary for avoiding estate duty. Assuming without accepting that Government reintroduces Estate Duty; one can expect that it will have serious anti-avoidance provisions. All planning done now will be infructuous.

Conclusion: All together tax evasion & tax planning both have been made impractical. **An atmosphere of terror has been created.**

Result: Indian businessmen feel terrorised. New investments have gone down. Growth rate in GDP has continuously gone down since 2015.

In USA Government & Business are partners. In India, business men are treated as “Presumed to be Guilty”.

Indian politicians know only the use of power – ability to terrorise. Fear will always fail in eliminating black money.

3. **Attacks – some views:**

3.1 **Black Money:**

Why attack black money? Money is money. It has no colour. Well black money means – Tax Base Erosion. In simple words, declared income is tax base. When the base is eroded, GOI gets less revenue. Hence the attack on black money.

3.2 **Tax Planning Vs. Tax Evasion:**

Consider the “Attack” from **Government’s view**. A professional may eloquently argue on legality of Tax Planning and differentiate Tax Planning from Tax Evasion. Planning is legal but contrary to Parliament’s intention. Do we need to comply with the law only in letter or in letter as well as in spirit? Government is only concerned with **tax revenue** - hard cash that comes into Government coffers. For Government – Tax Evasion & Tax Avoidance – both are equal. Avoidance hurts even more. Because, right before the eyes of the Government the tax payer is avoiding tax. Illustrations: Treaty Shopping – Azadi Bachao Andolan case; Indirect Transfer of Shares – Vodafone.

We consider it legal & hence creditable to do tax planning or tax avoidance. In GOI’s view there is no difference. The revenue is lost in both cases. Since Courts have recognised tax planning as legal, governments have come out with BEPS/GAAR/Transfer Pricing etc.

4. **Global Attack:**

4.1 **American Economic Crisis of 2007-08** damaged tax revenues of many countries. Cyprus, Iceland, Greece went insolvent. G20 analysed reasons for the American crisis and looked for remedies. They ignored main cause – Bankers’ & Institutional greed and focused on Tax Avoidance & Evasion. G20 & OECD together started BEPS programme. Let us say, the American Economic Crisis has caused a massive attack on Tax Evasion & Tax Planning.

Now look at immediate future: It is said that the economic crisis due to **Covid Pandemic** is going to be far worse. Central Government does not have enough money to pay GST share to states. Punjab State Government cannot pay salaries. So many employers are cutting salaries, jobs & so on. How severe can be the next attack on revenue losses?

4.2 Interpretation of law - Global changes:

DTA. BEPS - MLI.

Globally 135 countries are cooperating in this attack. There are attacks on Tax Havens & Banking Secrecy Law. Switzerland has been forced to declare information with its banks. In all cases, banks insist on copies of passport & proof of residence of the ultimate Beneficial Owner. And full information is being shared with Governments world over. Anonymous entities are now impossible.

Understanding the heart of BEPS is easy.

Base Erosion & Profit shifting reduce tax revenue. Hence attack both by amending treaty model. And of course by amending domestic law. Over. You have understood BEPS. If one wants to go into details - then he should attend thirty sessions on BEPS. He may get some idea.

4.3 Agreements & Unilateral Laws:

FATCA, BEATS & GIITI in USA.

OECD Pillar Two.

4.4 Challenges of Tax Evasion:

New Tax Havens.

Crypto Currencies.

4.5 Tax War:

There is another way in which tax base is eroded. When OECD drafts a treaty model that gives more taxing rights to some nations at the cost of others, then the "Others" lose their tax base. Hence Tax War. In case of Digital Taxation, real tax war is going on. Tax War also needs at least one session to understand more.

5. MAYA: Paradox.

Maya means -what you see is not real. And what is real cannot be seen. People are tempted by the unreal.

5.1 Global Maya: USA has mounted biggest attack on black money & criminal money. And then made the US tax havens most successful. **The United States "is effectively the biggest tax haven in the world" Andrew Penney, Rothschild & Co.** USA has several tax havens: Delaware, Nevada, Wyoming, South Dakota. They are thriving.

UK was biggest tax haven. Now breaking down.

Switzerland's business has been damaged.

Mauritius, UAE, Singapore businesses have suffered.

It is all a play of Maya - Greed, Ego

5.2 Indian attack on Black money & Tax Planning could be good for country & honest citizens. If all tax payers honestly paid taxes, tax rates could still be reduced and whole economy could benefit. Unfortunately, the way this "Attack" is conducted, it has more negatives & fewer positives. Black Money has not gone down. And harassment has increased. In real sense, the attack on Black Money has a limited success.

With all these challenges **corruption** has not gone down. It is the experience of so many people. Corruption money normally goes into black money. How are these corrupt people saving their skins from the attack on black money?

- (i) staying out of entire banking system. Taking cash, gold or crypto currency.
- (ii) depositing black money in US tax havens.

5.3 Why the attack on Black Money has not succeeded?

Reason is simple - Maya.

माया के शस्त्र - काम क्रोध लोभ मोह मान मत्सर.

Greed (लोभ) does not allow tax payers to be honest.

Similarly Greed does not allow men in power to be honest.

Law & Fear will never succeed in making man free from Maya.

Spirituality is the only way to free men from Maya. Intelligence, wealth, power will never succeed.

5.4 Greed, ego & Fear drive the non-spiritual people.

Truth & Love drive the spiritual people.

You select the forces that will inspire you.

Those who do not understand the concept of Maya, find great Paradoxes at national & global levels. Indians who understand Maya, consider this as "The Expected".

Concluded.

Pranam

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